

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BETTY GUZMAN,) Civil No.11-0069-WQH(WVG)
Plaintiff,)
v.) ORDER REGARDING JOINT
) STATEMENT FOR
) DETERMINATION OF
) DISCOVERY DISPUTES
)
)
BRIDGEPOINT EDUCATION,)
INC., ASHFORD UNIVERSITY,)
Defendants.)

On March 4, 2014, the Court received a Joint Statement For Determination of Discovery Disputes ("Joint Statement"). The Court, having reviewed the Joint Statement and the documents attached thereto, and GOOD CAUSE APPEARING, HEREBY DENIES as UNTIMELY the motions to compel further responses to interrogatories and requests for production of documents contained in the Joint Statement.

Background

On September 23, 2013, the Court issued a Case Management Conference Order ("CMC Order") that stated that discovery was authorized only for class certification

1 issues. Discovery on the merits of Plaintiff's claims and
 2 Defendants' defenses was not authorized.

3 The CMC Order states in pertinent part:

4 All discovery pertaining to facts shall be completed on or before March 31, 2014...

5 "Completed" means that all discovery under
 6 Rules 30-36 of the Federal Rules of Civil
 7 Procedure must be initiated a sufficient
 8 period of time in advance of the cut-off date,
 9 so that it may be completed by the cut-off
 10 date, taking into account the times for ser-
 11 vices, notice, and response as set forth in
 12 the Federal Rules of Civil Procedure. All
 13 disputes concerning discovery shall be brought
 14 to the attention of the Magistrate Judge no
 15 later than thirty (30) days following the date
 16 upon which the event giving rise to the dis-
 17 covey dispute occurred."(emphasis in origi-
 18 nal). (CMC Order, at 2, 11. 17-18, 20-27).

19 This Court's Chambers Rules also state in pertinent
 20 part: "For written discovery, the event giving rise to the
 21 discovery dispute is the date of the service of the
 22 response." (Hon. William V. Gallo Chambers Rules, at
 23 IV.E.).

24 On November 8, 2013^{1/}, Plaintiff and Defendants filed
 25 a Joint Motion For Extension of Time To File Joint State-
 26 ment Regarding Discovery Dispute ("Joint Motion For
 27 Extension"). In the Joint Motion For Extension, the
 28 parties acknowledged that the deadline to bring the
 dispute to the Court's attention was on the very day they
 filed it. On November 12, 2013^{2/}, the Joint Motion For

27 ^{1/}November 8, 2013 was a Friday.

28 ^{2/}November 12, 2013, a Tuesday, was the first business day after Veteran's
 Day, a federal court holiday.

1 Extension was denied for two reasons: the parties' failure
 2 to meet and confer in person and because it was untimely.

3 Requests for Admission and Interrogatories

4 On August 5, 2013, Plaintiff served Requests for
 5 Admission and Interrogatories on Defendants Ashford
 6 University ("Ashford") and Bridgepoint Education
 7 ("Bridgepoint").

8 On October 9, 2013, Ashford provided to Plaintiff
 9 Responses to the Requests for Admission and Interrogato-
 10 ries. No Responses were received from Bridgepoint.

11 On October 29, 2013, Plaintiff's counsel sent a meet
 12 and confer letter^{3/} to Ashford's counsel regarding his
 13 perceived deficiencies in Ashford's Responses to Requests
 14 for Admission and Interrogatories. The meet and confer
 15 letter also noted Bridgepoint's failure to respond.

16 On November 15, 2013, Bridgepoint provided to
 17 Plaintiff its Responses to Requests For Admission and
 18 Interrogatories.

19 On November 22, 2013, in compliance with the Court's
 20 Local Rules and this Court's Chambers Rules, albeit late
 21 in the process, counsel attended an in-person meet and
 22 confer conference. At the conference, Defendants' counsel
 23 stated that supplemental responses to the Requests for
 24 Admission and Interrogatories may be forthcoming, but did
 25 not indicate which discovery responses would be supple-
 26 mented.

27
 28 ^{3/}The meet and confer obligation done only by letter is a violation of the
 Court's Local Rules and this Court's Chambers Rules. Since counsel are both
 located in San Diego County, they were required to meet and confer in person.

1 On December 10, 2013 and January 23, 2014, Plaintiff's
 2 counsel sent an email and letter to Defendants' counsel which
 3 inquired of Defendants' counsel when supplemental responses to the Requests for Admission and Interrogatories would be provided.

4 On February 3, 2014, Defendants' counsel served on Plaintiff's counsel Supplemental Responses to the Requests for Admission and Interrogatories.

5 On March 4, 2014, the Court received the Joint Statement.

6 In accordance with Federal Rules of Civil Procedure 33(b)(2) and 36(a)(3), Ashford and Bridgepoint each had until September 4, 2013, to provide their responses to Plaintiff's discovery requests. When they did not respond on time, the 30-day clock to resolve those disputes began to run. Ashford's untimely responses 30 days later on October 9, 2013, did not reset the clock, but even assuming that it did, Plaintiff had until November 12, 2013, to bring the matter to the Court's attention. Defendant's Supplemental Responses served on February 3, 2014 also did not reset the clock as Plaintiff contends. To follow Plaintiff's logic, the 30-day clock would never begin to run as long as the opposing party continued to amend or supplement earlier responses. The filing by the parties of their Joint Motion For Extension on November 8, 2013, by itself, was insufficient to toll the clock.

7 It appears to the Court that the Response to Interrogatory No. 7 is the only interrogatory at issue in the

1 Joint Statement. The Response to Interrogatory No. 7 was
 2 served on October 9, 2013. The response was never changed
 3 or supplemented. Any motion to compel a supplemental
 4 response to Interrogatory No. 7 was due on November 12,
 5 2013^{4/}. Since the Joint Statement was not received by the
 6 Court until March 4, 2014, the motion to compel further
 7 response to Interrogatory No. 7 is untimely. Therefore,
 8 the motion to compel further response to Interrogatory No.
 9 7 is DENIED. Defendants need not provide a supplemental
 10 response to Interrogatory No. 7.

11 Requests For Production of Documents

12 On November 22, 2013, Plaintiff served on Ashford
 13 and Bridgepoint Requests for Production of Documents.

14 On December 23, 2013, Ashford and Bridgepoint served
 15 on Plaintiff their Responses to the Requests for Produc-
 16 tion of Documents.

17 On January 23, 2014, Plaintiff's counsel sent a meet
 18 and confer letter^{5/} to Defendants' counsel regarding his
 19 perceived deficiencies in Defendants' Responses to the
 20 Requests for Production of Documents

21 On January 27, 2014, Defendants' counsel responded
 22 to Plaintiff's counsel's meet and confer letter regarding
 23 their Responses to Requests for Production of Documents.
 24 Defendants' counsel maintained Defendants' objections to
 25 Requests for Production of Documents Nos. 11 and 16.

27 ^{4/}The actual date a motion to compel a supplemental response to
 28 Interrogatory No. 7 was due was November 10, 2013, a Sunday. See fn. 2.

^{5/}See fn. 3

1 On February 3, 2014, counsel attended an in-person
2 meet and confer conference regarding Defendants' Responses
3 to the Requests for Production of Documents. At the
4 conference, Defendants' counsel maintained Defendants'
5 objections to Requests for Production of Documents Nos. 11
6 and 16.

7 On March 4, 2014, the Court received the Joint
8 Statement.

9 It appears to the Court that the Responses to
10 Requests for Production of Documents Nos. 11 and 16 are at
11 issue. The Response to Requests for Production of Docu-
12 ments Nos. 11 and 16 was served on December 23, 2013. Any
13 joint statement containing a motion to compel further
14 responses to Requests for Production of Documents Nos. 11
15 and 16 was due on January 23, 2014. Since the Joint
16 Statement was received by the Court on March 4, 2014, the
17 motion to compel further responses to Requests for Produc-
18 tion of Documents Nos. 11 and 16 is untimely. Therefore,
19 the motion to compel further responses to Requests for
20 Production of Documents Nos. 11 and 16 is DENIED. Defen-
21 dants need not provide supplemental responses to Requests
22 for Production of Documents Nos. 11 and 16.

23 Conclusion

24 This is not a close call. Plaintiff clearly knew the
25 rules that discovery disputes must be brought to the
26 Court's attention in a timely manner and no later than 30
27 days from the time the dispute arose. The parties were
28 advised of this in the Court's Order of November 12, 2013.

1 The clock does not reset simply because Plaintiff allowed
 2 Defendants to serve untimely responses. At this time, with
 3 two weeks left before fact discovery is to conclude on
 4 March 31, 2014, the parties brought to the Court's atten-
 5 tion discovery disputes that arose in October and December
 6 2013.

7 In the Case Management Conference Order, the parties
 8 were ordered that all discovery was to be initiated so
 9 that it was completed by the set deadline. To allow the
 10 requested discovery would require an extension of time for
 11 fact discovery to be completed, which in turn, would
 12 require extending the date by which the critical Motion
 13 for Class Certification must be filed.^{6/} At this time, the
 14 Court is unwilling to extend any dates set in the Case
 15 Management Conference Order.

16 In Wong v. Regents of the University of California,
 17 410 F.3d 1052, 1060, 1062 (9th Cir. 2005), the court
 18 stated:

19 In these days of heavy caseloads, trial
 20 courts... routinely set schedules and estab-
 21 lish deadlines to foster the efficient treat-
 22 ment and resolution of cases. Those efforts
 23 will be successful only if the deadlines are
 24 taken seriously by the parties, and the best
 25 way to encourage that is to enforce the dead-
 26 lines. Parties must understand that they will
 27 pay a price for failure to comply strictly
 28 with scheduling and other orders, and that
 failure to do so may properly support severe
 sanctions and exclusion of evidence...
 If (Plaintiff) had been permitted to disregard
 the deadline..., the rest of the schedule laid
 out by the court months in advance, and under-
 stood by the parties, would have to have been

^{6/}The Case Management Conference Order set April 30, 2014 as the date by which the Motion for Class Certification must be filed.

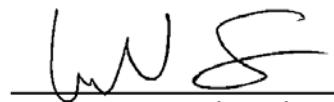
1 altered as well. *Disruption to the schedule of*
2 *the court and other parties is not harmless.*
3 Courts set such schedules to permit the court
4 and the parties to deal with cases in a thor-
ough and orderly manner, and they must be
allowed to enforce them, unless there are good
reasons not to. (emphasis added).

See also 02 Micro Intern Ltd. v. Monolithic Power
Systems, Inc., 467 F.3d 1355, 1368-1369 (9th Cir. 2006).

Neither party, but particularly Plaintiff, has explained, let alone justified, the extraordinary delay in bringing these disputes to the Court's attention. Without good cause having been demonstrated, there is no reason to grant the parties' requests.

IT IS SO ORDERED.

DATED: March 18, 2014



Hon. William V. Gallo
U.S. Magistrate Judge